

September 15, 2011

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Re: *Universal Service Intercarrier Compensation Transformation Proceeding, WC 10-90, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, and WC Docket No. 03-109*

Early Adopter States' Joint Recommendation

The state public utility commissions of Kansas, Michigan, Nebraska, New Mexico, and Wyoming (Early Adopter States) submit this joint ex parte letter to the Federal Communications Commission (FCC) requesting that the FCC refrain from taking steps in the above referenced Universal Service Fund (USF) - Intercarrier Compensation (ICC) dockets that will jeopardize the success these "Early Adopter States" have had in reducing intrastate access charges and shifting implicit subsidies to explicit State access restructuring mechanisms and universal service funds.

Like the FCC, our Early Adopter States have state statutes, rules, and orders in place that required us to implement intrastate access reforms, resulting in significant reduction to, or towards, parity with interstate access rates. State access reforms have resulted in intrastate access rates being in parity on an on-going basis (Kansas) or as of a specific time (Michigan and New Mexico). These state reforms prevent high intrastate access rates from implicitly subsidizing universal service and reduce the attractiveness of arbitrage that may occur when jurisdictional access rates significantly differ. For example, Kansas is statutorily mandated to maintain parity between interstate and intrastate access rates and Wyoming fulfilled its legislative mandate to reduce intrastate access charges to only \$.03 per minute. Neither state is aware of traffic pumping activities.

Also like the FCC, States need time to review their statutes, rules and regulations to determine what changes may be necessary to achieve further access reform and how such reform could be implemented. For example, Wyoming has advised its legislature of revisions that will need to be made to its laws that govern its state universal service fund to address changes in the market, federal regulatory policy, and technology. Kansas has received input from parties to identify whether its statute may need to be modified, and if so, what revisions are needed to address reforms pending before the FCC.¹

Our Early Adopter States have established either a dedicated fund (Michigan's is called an "Intrastate Switched Toll Access Restructuring Mechanism Fund") or a State USF. Kansas achieved interstate/intrastate access rate parity in the 1990s, funding it through the Kansas USF; Michigan began its process to achieve parity in 2009, funding it through the new Michigan Access Restructuring Mechanism fund. Nebraska reduced intrastate access rates in the late 1990s and funded those

¹ *In the Matter of a General Investigation into the Kansas Universal Service Fund pursuant to K.S.A. 66-2008(c)*, Docket No. 12-GIMT-170-GIT.

reductions through the Nebraska USF. New Mexico achieved parity in 2006, funding it through the New Mexico USF. In 1995, Wyoming created its USF and has reduced its intrastate switched access rates to \$.03 per minute, accompanying these reductions with revenue-neutral rate rebalancing.

It appears that the FCC is contemplating ordering further access rate reductions and has stated that it does not intend to provide FUSF funding to make up for the loss of access revenue. FCC USF/ICC Reform NPRM, ¶ 178 (FCC Doc 11-13). The Early Adopter States are concerned that the FCC, in response to the ABC Plan or its own proposals, will issue a USF/ICC order that will result in a significant, duplicative and unfair shift of the costs of access reform to the Early Adopter States. Carriers in all Early Adopter States have been given the opportunity to seek (and sometimes the right to) recovery of the revenue lost as a result of access rate reductions from a State USF, an access recovery mechanism, and/or through revenue neutral rate rebalancing. If the FCC offers carriers a newer or increased SLC based on the current proposal, consumers in our states will be paying twice. This will not solve the USF or ICC problems, but will shift an additional burden to the States and the reforms the Early Adopter States have already put in place. Exhibit A to this letter provides a more detailed analysis of our state laws and reforms that will be upset by abrupt access rate restructuring.

We are also concerned about the lack of details about how a new federal access recovery mechanism will work in conjunction with current state USFs and access recovery mechanisms. Without more specific details, and absent state-federal cooperation, implementing a new access mechanism without additional data could result in companies either not receiving a sufficient amount of support or receiving a windfall.

The Early Adopter States do not have as great a need to reduce intrastate access rates because they have already implemented significant reductions in these rates. As a result, consumers pay higher prices through state USF or access recovery assessments and/or local service rates. Last year our five states disbursed over \$140 million in high-cost and/or access recovery support to eligible incumbent local exchange carriers, thereby lessening the substantial burden on the FUSF by decreasing the cost burden that would otherwise fall entirely on the FUSE. Early Adopter States and the companies and consumers in their states, have already borne additional costs for access reductions and should not be asked to bear an unfair share of costs to further achieve the FCC's goals.

In short, there is no valid reason for the FCC to order aggressive intrastate and interstate rate reductions nationwide that may result in neutralizing successful Early Adopter State access reduction funding mechanisms. Furthermore, the States, along with other parties in the proceeding, question whether the FCC has authority to order states to reduce intrastate access rates and possibly, inequitably distribute the costs of those reductions from one group of states to another.

The Early Adopter States make the following recommendations:

1. The FCC should collect data and information to study the interaction of a revised federal mechanism with existing state access reform and USF mechanisms before approving a reform plan.
2. The FCC should provide a longer transition period to allow all states and companies time to review modifications that may be needed to state statutes, rules, and regulations in order to accommodate federal reforms. Any mechanism adopted by the FCC should recognize that Early Adopter States have already implemented their own state reform efforts.

3. In states where intrastate and interstate switched access rates are at or near parity, the FCC should not require immediate cuts to access rates. With interstate and intrastate rates at, or near parity, there is no inconsistency between state and federal policy goals that would possibly justify such action. Furthermore, the FCC must be careful not to overthrow state legislative mandates regarding access charges.
4. The FCC should not disturb the concurrent regulatory scheme, but maintain the working partnership with the states. The dual-jurisdictional roles have worked for decades and will continue to do so well into the future. To do otherwise will result in the FCC becoming responsible for many duties that states now perform (e.g. resolution of carrier to carrier disputes, consumer disputes, service regulation, audits, eligible telecommunications carrier (ETC) certifications, certification of FUSF support consistent with Section 254, etc.).

Sincerely,

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Tim Schram, Chairman
Nebraska Public Service Commission

Steve Oxley, Deputy Chair
Wyoming Public Service Commission

Orjiakor Isiogu, Chairman
Michigan Public Service Commission




Patrick H. Lyons, Chairman
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Kansas:

In 1996, the Kansas Telecommunications Act was enacted. The Act required all incumbent local exchange carriers (LECs) to reduce their intrastate switched access rates to mirror their interstate switched access rates over a three-year period. The rate-of-return regulated rural LECs are required to adjust their intrastate switched access rates to parity with interstate rates on a biennial basis, with the adjusted intrastate switched access revenue recovered on a revenue-neutral basis from the state USF. The Kansas Act does not require on-going intrastate rate parity for price cap carriers (AT&T and CenturyLink), but provides the Commission with discretion to authorize access rate parity. AT&T and CenturyLink may seek recovery of the access revenues from the state USF or local rate rebalancing. The Act also requires the Commission to determine statewide affordable residential and single-line business rates for the rural LECs. Effective March 1, 2011, the rural LEC residential affordable rate increased to \$16.25 and the single-line business rate increased to \$19.25. If a rural LEC elects to maintain rates below the affordable rates, the associated rebalancing revenue is imputed as an offset to the company's state USF support. The KUSF assessment last year was 6.64%, resulting in the ILECs' local service customers paying an additional USF fee of: AT&T - \$2.08, CenturyLink -\$1.98, and rural LECs - \$1.51. The KUSF disbursed \$50.1 million to incumbent LECs last year.

Michigan:

Michigan's law, in 2009, required access reform to reduce intrastate access rates to interstate access rates for all ILECs and CLECs. There is concern regarding how a state Access Restructuring Mechanism (ARM) and a federal ARM will work together and how support from the federal ARM for intrastate access will be determined when local rates are below the ceilings. Furthermore, the ABC Plan indicates that the FCC may be responsible for determining the local rates used to determine the EUCL Ceiling calculation; however, it is the state that should determine the final impact and affordability of rates for end users. Michigan opposes pre-emption of state access restructuring and COLR obligations.

Carriers contribute 0.62% of their intrastate retail telecommunications revenues for each month to support the ARM. Michigan's statute does not require nor prohibit a carrier from passing its assessment on to customers, although Michigan has not determined a standard per line assessment. For 2011, Michigan's ARM will disburse approximately \$15.8 million annually to eligible carriers to compensate them for lost intrastate access revenues.

Nebraska:

In 1999, consistent with state law, the NPSC implemented a state universal service fund mechanism, largely mirroring federal principles. In furtherance of these principles, the NPSC established a mechanism funded through an explicit surcharge on intrastate retail rates of 6.95 percent. Carriers were required to implement LTR (Local Transport Restructure) and eliminate CCL and TIC elements from intrastate access rates. NUSF eligibility was also conditioned upon the carriers increasing local rates to the NPSC adopted benchmark of \$17.50, which has since increased to \$17.95 in urban areas and \$19.95 in out-of-town areas. During the transitional period, the net local rate revenue increase and access charge reductions were replaced in part by explicit support. The NPSC requires carriers to file earnings information annually. Since its inception, the NUSF has distributed over \$643 million in high-cost support. Additional burdens

placed on Nebraska consumers in the form of increased local rates, increased SLC charges or increased pressure on the state universal service fund would undermine the careful balance struck by the NPSC. Additional costs imposed on the states would also place Nebraska consumers at an unfair disadvantage when compared to states that have not enacted similar reform. The Nebraska USF disbursed \$47.5 million in high-cost support to eligible carriers last year.

New Mexico

Beginning April 1, 2006, and completed effective January 1, 2008, all incumbent LECs' intrastate switched access rates were adjusted to parity with their January 1, 2006 interstate switched access rates. Rules require carriers to file tariffs and continue to mirror the updated interstate switched access rates. (N.M. Admin Code 17.11.10.8(C), N.M.S.A. 63-9H-6I, and 17.11.10.8(I)). If the FCC adopts ICC reform that pre-empts intrastate access rates and reduces both intrastate and interstate switched access rates to almost zero, it may lead to carriers, on a non-state boundary basis, increasing their Federal EUCL above the current rate (\$6.50 for rural LECs) to compensate for the lost access revenue. This could leave New Mexico's ratepayers paying twice (and in some cases, three times) for the same access rate reduction. States that have undertaken reforms should not be penalized by any federal mechanism, and the FCC should consider state-specific Federal SLCs with credits to Early Adopter States or compensating Federal USF transfers to the Early Adopters' State USF funds. The FCC should not pre-empt states on the intra-state access rates while guidelines are worth consideration. The NM USF disburses \$24 million annually to replace the lost access revenues to rural LECs. Qwest is allowed to charge a \$1.59 per month intrastate SLC.

Wyoming:

Wyoming adopted legislation in 1995 to rebalance rates and make local exchange rates cost-based with almost all residential and business lines at parity, and establish a state universal service fund. Wyoming has reduced implicit subsidies in intrastate access charges. The Wyoming Telecommunications Act sets intrastate originating and terminating switched access rates at \$0.03 per minute, subject only to preemption by a federal mandate that would require them to be higher.

Wyoming has a state universal service fund (WUSF) based on rules, effective since 1996. All federal universal service support is credited to statutorily-defined high-cost basic local exchange service rates. Looking forward, the Commission has already advised our Legislature that the statute governing our universal service fund must be revised to address changes in the market, federal regulatory policy, and technology. The fund is price based and not presently designed to support broadband or technologically advanced wireline services.

The WUSF provides high-cost support in the form of bill credits to customers on 30,452 access lines. The WUSF assessment is 1%. The WUSF distributes \$2.6 million of high-cost support annually, \$218,801 monthly, or approximately \$7.18 per month per line to carriers.